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November 25, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re/ application of Zahir Saidi and Boris Klyashchitsky
U.S. Application No. 10/019,100
Filed on December 20, 2001
PCT Application No. PCT/US99/14351
International Filing Date June 24, 1999
Priority Date June 26, 1998

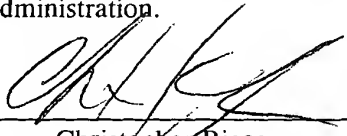
Aqueous Compositions Containing
Corticosteroids for Nasal and Pulmonary Delivery

(Atty. Docket No. P24,800-A USA)

CERTIFICATE OF EXPRESS MAILING

I hereby certify that this document, along with any papers indicated as being enclosed, are being deposited on November 25, 2002 with the United States Postal Service in an envelope marked "Express Mail Post Office to Addressee," Mailing Label No. EL 930922515 US addressed to: Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, Attn: Office of PCT Legal Administration.

11/25/02
Date


Christopher Ricco

Commissioner for Patents
Office of PCT Legal Administration
Box PCT
Washington, DC 20231
ATTN: PCT Legal Office

SECOND RENEWED PETITION UNDER 37 CFR § 1.137(b)

Sir:

It is hereby petitioned that the "Decision on Renewed Petition under 37 CFR 1.137(b)" (hereinafter "the 2nd Decision"), dated September 30, 2002, be

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reconsidered and that as supplemented by this Second Renewed Petition Under 37 CFR § 1.137(b), applicants' previously submitted Petition under 37 CFR § 1.137(b) (hereinafter "the 1st Petition"), dated December 20, 2001, be granted. The Commissioner is authorized hereby to charge any additional fees associated with this communication to Deposit Account No. 19-5425.

The 1st Petition was filed on behalf of Elan Corporation, plc (hereinafter "Elan") and requested revival of a U.S. patent application that had been abandoned by virtue of an unintentional failure to file timely an express Request that the U.S. national stage of processing be commenced pursuant to 35 U.S.C. § 371. The 1st Petition was denied in the "Decision on Petition under 37 CFR 1.137(b)" (hereinafter "the 1st Decision"), dated April 26, 2002, and information was requested to establish that LDS Technologies, Inc. (hereinafter "LDS") unintentionally abandoned the application. In reply to the 1st Decision, Applicants filed a "Renewed Petition under 37 CFR 1.137(b)" (hereinafter "the 2nd Petition"), dated May 15, 2002, to clarify that LDS had no interest in the application and was not responsible for the application when it went abandoned on December 26, 2000. The 2nd Petition was denied in the above-identified 2nd Decision.

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The 2nd Decision states that applicants' 2nd Petition was dismissed without prejudice.

The 2nd Decision states that additional explanation is necessary to show why LDS was not responsible for the application at the time of abandonment and cites Applicants' statement from the 1st Petition, page 3, first full paragraph, "[E]arlier this year [2001], responsibility for the U.S. priority application on which the PCT application is based and the PCT and other applications stemming therefrom, as well as other patent cases that were acquired by Elan's subsidiary from LDS, was transferred from LDS's patent counsel to the firm undersigned." Applicant respectfully submits that the statement was not intended to be interpreted in the way it was taken by the Examiner. Consequently, Applicant provides the following additional explanation and information concerning the unintentional abandonment of U.S. Application No. 10/019,100.

U.S. Application No. 10/019,100 stems from International Application No. PCT/US99/14351. The International Application was filed in the name of LDS on June 24, 1999; claimed a priority date of June 26, 1998; and included the United States with several other countries elected for "national phase" entry. On August 15, 2000, LDS transferred all rights in the application along with other intellectual property to Athena Neurosciences, Inc., a wholly-owned subsidiary of Elan. From

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the date of the transfer forward, Elan assumed responsibility for the patent properties it purchased including responsibility for continued prosecution of the present application. During the initial period following transfer, Elan relied on LDS' patent counsel, who it considered to be its patent counsel, to notify it of required actions and deadlines. Nevertheless, it did not become aware of the need to file an express Request that the U.S. national stage of processing be commenced pursuant to 35 U.S.C. § 371 by the deadline of December 26, 2000. Had Elan been aware, it would have filed the Request. At the end of this period of time, Elan transferred responsibility for prosecution to present counsel who took over the prosecution of this case and all other cases covered by the LDS transfer of August 15, 2000. During the initial period of time as well as after the transfer of responsibility to present counsel, the responsibility for the case was Elan's, who intended that the application be not abandoned.

In summary, the statement cited by the Examiner in the 2nd Decision was not intended to indicate that LDS was responsible for controlling prosecution of the application when it went abandoned. As set forth in the Petition, the entire delay in filing the express Request that the U.S. national stage of processing be commenced measured from the December 26, 2000 deadline until the filing of the 1st Petition on December 20, 2001 was unintentional. During the entire period, the responsible

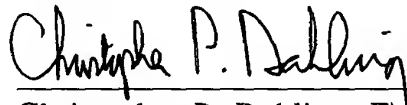
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entity was the new owner Elan, not LDS irrespective of what attorneys were involved.

The Commissioner is urged to grant the petition to revive the U.S. Patent Application and an early and favorable decision is requested respectfully.

Respectfully submitted,


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